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the land to the public in "whole or in part" the public was entitled to travel over all of it.

**4. Eminent Domain—Compensation for Property Taken—Value.—**

A strip of land sought to be condemned had been occupied by a railway continuously for many years, during which time the strip had been repurchased by defendants for default in the payment of a debt secured by a deed of trust on the land. Held, that by defendants' purchase under the deed of trust, they acquired the property in its then condition, and hence an instruction limiting their recovery to a sum based on the value of the land when the railway was constructed was properly refused.

**5. Writ of Error—Record—Review of Instructions.—**Where instructions copied into the record were nowhere made a part of it by any bill of exceptions, they could not be reviewed on writ of error.

[Ed. Note.—For cases in point, see vol. 3, Cent. Dig. Appeal and Error, §§ 2416, 2376.]

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CHESAPEAKE & O. RY. CO. *v.* COMMONWEALTH.

June 14, 1906.

[54 S. E. 331.]

**Railroads—Transportation Across River—Statutes.—**Under Act Feb. 27, 1879, authorizing a railroad company to purchase the franchises and property of the J. & K. Company, which had been chartered to construct a waterway from the head of tidewaters on the J. river, connecting with those of the K. river, the railroad company to furnish to the people on the south of J. river, for transportation across the river to its railroad, "facilities, the same or at least equal to those now afforded by the J. & K. Company"; and Act May 20, 1887 (Acts 1887, Ex. Sess. p. 422, c. 329), providing that, by reason of petitions of numerous residents of the J. river valley, who claimed that serious injuries were being inflicted on them by maintenance of certain dams across the J. river, and that their removal would be not only beneficial to health, but to property, "improving sanitary conditions and lowering the flood lines," commissioners should be appointed to examine into the feasibility of removing dams belonging to said railroad company, and that, on the report of the commissioners being made, the railroad company should have authority to remove the dams reported as practical and proper to be removed: and that if they were so removed the railroad company should not be liable for any damages claimed to result from such removal, the only facility furnished by the J. & K. Company having been the waterway, boats thereon having been run by others paying tolls for its use, the removal pursuant to the act of 1887, which is valid as an exercise of the police power, of a dam erected by the J. & K. Company, such removal preventing transportation by a ferry across the river at that point, does not require the railroad company to furnish a bridge or other means for transportation across the river at such point.